

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ESTATE OF ADAM CHRISTOPHER  
JENSEN, by the Personal Representative  
PAULA DOW, *et al.*,

Plaintiffs,

v.

COUNTY OF SNOHOMISH, *et al.*,

Defendants.

CASE NO. C20-1320-JCC

ORDER

This matter comes before the Court on the parties' motion for the Court to enter the parties' stipulated protective order (Dkt. Nos. 30). Having considered the motion and the relevant record and finding good cause, the Court hereby GRANTS the motion and ENTERS the following protective order:

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public

1 disclosure and use extends only to the limited information or items that are entitled to  
2 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
3 parties to file confidential information under seal.

4 **2. "CONFIDENTIAL" MATERIAL**

5 "Confidential" material shall include the following documents and tangible things  
6 produced or otherwise exchanged:

- 7 a. Video footage of the incident scene containing images of minor children, unless  
8 all images of minor children are redacted;
- 9 b. Medical records for Adam Jensen, deceased, protected under RCW 70.02;
- 10 c. Financial records for Adam Jensen, deceased;
- 11 d. Snohomish County Medical Examiner's Office autopsy records for Adam Jensen,  
12 including graphic photographs of the deceased;
- 13 e. SMART incident scene photographs depicting graphic images of Adam Jensen,  
14 deceased;
- 15 f. All records related to any Federal Medicare/Medicaid benefit and services records  
16 for Adam Jensen, deceased;
- 17 g. All records related to any State of Washington Department of Health and Human  
18 Services benefit and services records for Adam Jensen, deceased;
- 19 h. Sensitive information contained in Snohomish County Sheriff's Office employee  
20 or personnel records, such as medical and/or psychological records, home addresses, personal  
21 telephone numbers, social security information, date of birth, or any other personal information;  
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i. Sensitive information contained in independent agency employee or personnel records, such as medical and/or psychological records, home addresses, personal telephone numbers, social security information, date of birth, or any other personal information;

j. Personal information regarding children under the age of eighteen; and

k. Any other information to be requested in discovery that has an equivalent need for protection from disclosure as the items identified in paragraph 2.

l. Records that are marked confidential shall not be disclosed in response to public records requests.

### **3. SCOPE**

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

### **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

1           4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party, a receiving party may  
3 disclose any confidential material only to:

4                   (a)     the receiving party’s counsel of record in this action, as well as employees  
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6                   (b)     the officers, directors, and employees (including in-house counsel) of the  
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
9 designated;  
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11                  (c)     experts and consultants to whom disclosure is reasonably necessary for  
12 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
13 A);

14                  (d)     claims representatives for insurance carriers reasonably necessary for  
15 purposes of coverage and indemnity evaluation;  
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17                  (e)     the court, court personnel, and court reporters and their staff;

18                  (f)     copy or imaging services retained by counsel to assist in the duplication of  
19 confidential material, provided that counsel for the party retaining the copy or imaging service  
20 instructs the service not to disclose any confidential material to third parties and to immediately  
21 return all originals and copies of any confidential material;

22                  (g)     during their depositions, witnesses in the action to whom disclosure is  
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
24 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
25 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
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1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
2 under this agreement;

3 (h) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
6 referencing such material in court filings, the filing party shall confer with the designating party,  
7 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
8 remove the confidential designation, whether the document can be redacted, or whether a motion  
9 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
10 designating party must identify the basis for sealing the specific confidential information at issue,  
11 and the filing party shall include this basis in its motion to seal, along with any objection to  
12 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be  
13 followed and the standards that will be applied when a party seeks permission from the court to  
14 file material under seal. A party who seeks to maintain the confidentiality of its information must  
15 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the  
16 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,  
17 in accordance with the strong presumption of public access to the Court's files.

## 20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
22 or non-party that designates information or items for protection under this agreement must take  
23 care to limit any such designation to specific material that qualifies under the appropriate  
24 standards. The designating party must designate for protection only those parts of material,  
25 documents, items, or oral or written communications that qualify, so that other portions of the  
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1 material, documents, items, or communications for which protection is not warranted are not  
2 swept unjustifiably within the ambit of this agreement. Mass, indiscriminate, or routinized  
3 designations are prohibited. Designations that are shown to be clearly unjustified or that have  
4 been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case  
5 development process or to impose unnecessary expenses and burdens on other parties) expose  
6 the designating party to sanctions. If it comes to a designating party's attention that information  
7 or items that it designated for protection do not qualify for protection, the designating party must  
8 promptly notify all other parties that it is withdrawing the mistaken designation.  
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10 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
16 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
17 contains confidential material. If only a portion or portions of the material on a page qualifies for  
18 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
19 making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
21 and any participating non-parties must identify on the record, during the deposition or other  
22 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
23 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
24 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
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1 transcript, or exhibits thereto, as confidential. If any party or non-party desires to protect  
2 confidential information at trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a prominent place  
4 on the exterior of the container or containers in which the information or item is stored the word  
5 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
6 the producing party, to the extent practicable, shall identify the protected portions.

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8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
9 designate qualified information or items does not, standing alone, waive the designating party’s  
10 right to secure protection under this agreement for such material. Upon timely correction of a  
11 designation, the receiving party must make reasonable efforts to ensure that the material is  
12 treated in accordance with the provisions of this agreement.

## 13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
15 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
19 original designation is disclosed.

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21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
22 regarding confidential designations without court involvement. Any motion regarding  
23 confidential designations or for a protective order must include a certification, in the motion or in  
24 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
25 conference with other affected parties in an effort to resolve the dispute without court action. The  
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1 certification must list the date, manner, and participants to the conference. A good faith effort to  
2 confer requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
4 intervention, the designating party may file and serve a motion to retain confidentiality under  
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
8 other parties) may expose the challenging party to sanctions. All parties shall continue to  
9 maintain the material in question as confidential until the court rules on the challenge.  
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11 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
12 **PRODUCED IN OTHER LITIGATION**

13 If a party is served with a subpoena or a court order issued in other litigation that compels  
14 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
15 party must:

16 (a) promptly notify the designating party in writing and include a copy of the  
17 subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to  
19 issue in the other litigation that some or all of the material covered by the subpoena or order is  
20 subject to this agreement. Such notification shall include a copy of this agreement; and  
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22 (c) cooperate with respect to all reasonable procedures sought to be pursued  
23 by the designating party whose confidential material may be affected.  
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1                   **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2                   If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
3 material to any person or in any circumstance not authorized under this agreement, the receiving  
4 party must immediately (a) notify in writing the designating party of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
7 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
8 Agreement to Be Bound” that is attached hereto as Exhibit A.  
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10                   **9. INADVERTENT PRODUCTION OF PRIVILEGED**  
11                   **OR OTHERWISE PROTECTED MATERIAL**

12                   When a producing party gives notice to receiving parties that certain inadvertently  
13 produced material is subject to a claim of privilege or other protection, the obligations of the  
14 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
15 provision is not intended to modify whatever procedure may be established in an e-discovery  
16 order or agreement that provides for production without prior privilege review. The parties  
17 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.  
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19                   **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

20                   Within sixty (60) days after the termination of this action, including all appeals, each  
21 receiving party must return all confidential material to the producing party, including all copies,  
22 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods  
23 of destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of  
24 all documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
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1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
2 work product, even if such materials contain confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a  
4 designating party agrees otherwise in writing or a court order otherwise.

5 It is so ORDERED.

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7 DATED this 3rd day of January 2021.

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11 John C. Coughenour  
12 UNITED STATES DISTRICT JUDGE  
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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on February 3,  
2021 in the case of *Paula Dow, as P.R. for the Estate of Adam Christopher Jensen, v. Snohomish*  
*County, et al.*, C20-1320-JCC, I agree to comply with and to be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where  
sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_